IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 896 OF 2004

Dattaram Mahadev Teli @ Petkar. ... Appellant.

Versus

Bhiva Mahadev Teli @ Petkar & Ors.... Respondents.

Mr. R. D. Sawant for the Appellant.

Mr. S. G. Karandikar for Respondent No.1.

CORAM : A. S. OKA, J.

DATED : 21ST APRIL, 2005.

P.C.:

Heard learned Counsel appearing for the parties.

2. This second appeal is preferred by original Defendant No.2. Decree passed by the trial Court is for partition and separate possession. The decree has been confirmed by the Appellate Court. The main contention raised before the first Appellate Court is whether the suit property described in paragraphs 1A and 1B of the plaint are tenanted properties of the joint family. The contention of the Appellant / Defendant No.2 is that the said properties are his

self-acquired tenanted properties and he has spent a sum of Rs.20,000/- for development of the properties.

3. Learned Counsel for the Appellant submitted that in the written statement a specific plea of tenancy was raised by the Appellant by stating that the Appellant has acquired the said lands as tenant and by virtue of provisions of Bombay Tenancy and Agricultural Lands Act, 1948 he has become owner of the said lands. He submitted that whether the Appellant was a tenant in his individual capacity or whether he was holding the said land on behalf of the joint family was an issue which ought to have been referred to the Tribunal under the said Act of 1948. He submitted that the Civil Court had no jurisdiction to decide the said issue and therefore order of reference ought to have been passed by the trial Court and trial Court committed an error by not referring the issue to the Tribunal.

4. Shri Karandikar, learned Counsel appearing for Respondent No.1, submitted that at the time of recording evidence, the Appellant came out with a case that he has purchased the suit properties described in paragraphs 1A and 1B of the plaint and the case of

acquisition under the provisions of the said Act of 1948 was given up.

5. I have considered the rival submissions. It is true that in the written statement filed by the Appellant, there is a plea of tenancy. However, the Appellate Court has recorded a finding that there was no proceeding under Section 32G of the said Act of 1948 between the original landlord and the Appellant. The Appellate Court recorded a finding that the name of Appellant was mutated in the revenue record on the strength of a Sale Deed. Deposition of the Appellant shows that he has not come out with the plea that he has acquired lands in question under the provisions of the said Act of 1948. In fact, he has come out with the case that he has acquired the properties by an unregistered Sale Deed.

6. It is pertinent to note here that the Appellant has not come out with the plea that he continued to hold lands in question as agriculture tenant. If this was the only plea then there was a substance in the contention raised by the Appellant that case for making reference was made out. However, even prima facie material was not produced by the Appellant in

support of his plea in the written statement that the acquisition of the ownership was by virtue of the provisions of the said Act of 1948. In fact reliance is placed on the sale deed executed in his favour. In my view, the courts below were therefore justified in not making order of reference.

7. The Appellant has come out with the case regarding improvement carried out by him on the suit property and regarding constructions made by him.

8. Whether the Appellant has carried out any improvement and what is the effect of the said improvement are the questions which can be agitated in partition proceedings for effecting actual partition. In such proceedings equities are always required to be adjusted. No substantial question of law arises in this Second Appeal. Second Appeal is dismissed with no order as to costs.

9. Parties to act on the authenticated copy of this order.

Sd/-

(A. S. OKA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 291 OF 2004

IN

SECOND APPEAL NO. 896 OF 2004

Dattaram Mahadev Teli @ Petkar. ... Appellant.

Versus

Bhiva Mahadev Teli @ Petkar & Ors.... Respondents.

Mr. R. D. Sawant for the Appellant.

Mr. S. G. Karandikar for Respondent No.1.

CORAM : A. S. OKA, J.

DATED : 21ST APRIL, 2005.

P.C.:

1. In view of the dismissal of the Second Appeal itself, this civil application does not survive. Hence rejected.

Sd/-

(A. S. OKA, J.)